

## **U.S. Department of Justice**

United States Attorney Eastern District of New York

SDD:SK F.#2015R01313

271 Cadman Plaza East Brooklyn, New York 11201

December 8, 2015

## By Hand and ECF

The Honorable William F. Kuntz II United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Re: United States v. Ali Saleh

Criminal Docket No. 15-517 (WFK)

## Dear Judge Kuntz:

The government respectfully submits this letter in advance of the December 9, 2015, status conference in the above-captioned matter, being held pursuant to Section 2 of the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"), to consider matters relating to classified information.

The government is conducting an ongoing review of classified information related to this case and has determined that it is necessary for the government to file a motion for a protective order, pursuant to Section 4 of CIPA, relating to the treatment of classified information. Section 4 of CIPA provides the authority for the government to make such a motion and to do so in camera and ex parte:

The court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the

statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

18 U.S.C. App. 3, § 4. Accordingly, the government respectfully requests that the Court enter a motion schedule setting February 29, 2016, as the due date for the government's motion pursuant to Section 4 of CIPA.

The government further requests that the Court authorize the government to submit its motion <u>in camera</u> and <u>ex parte</u>. Courts have consistently held that <u>in camera</u>, <u>ex parte</u> submissions to a district court in matters involving national security are proper. <u>See</u>, <u>e.g.</u>, <u>United States v. Abu-Jihaad</u>, 630 F.3d 102, 142-43 (2d Cir. 2010); <u>United States v. Mejia</u>, 448 F.3d 436, 455 (D.C. Cir. 2006); <u>United State v. Gurolla</u>, 333 F.3d 944, 951 (9th Cir. 2003); <u>United States v. Pringle</u>, 751 F.2d 419, 427 (1st Cir. 1984); <u>United States v. Shehadeh</u>, 857 F. Supp. 2d 290, 293 n.2 (E.D.N.Y. 2012) (Vitaliano, J.).

Respectfully submitted,

ROBERT L. CAPERS United States Attorney

By: /s/
Saritha Komatireddy
Melody Wells
Assistant U.S. Attorneys
(718) 254-6054/6422

cc: Susan G. Kellman, Esq. (by ECF)